

b.) Remarks

Claim 1 has been amended, and claims 17 and 18 presented, in order to recite the subject matter of the present invention with the specificity required by statute. Additionally, claims 5, 6, 11 and 13-15 are amended for better idiomatic usage and/or better conformity with accepted U.S. practice or their antecedent claims.

The subject matter of the amendment may be found in the specification as filed from page 6, line 1 to page 7, line 9, and from page 7, line 17 to page 8, line 6. Accordingly, no new matter has been added.

The Examiner has requested that Applicants affirm their provisional election to prosecute invention of Group II, claims 4-15. By the above amendment cancelling claims 1-3 and 16, that election is hereby affirmed.

Claims 4-6 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In response, the claims have been amended in conformity with the Examiner's kind suggestions.

Claims 4 and 6-15 are rejected under 35 U.S.C. §112, first paragraph, because the Examiner contends the specification does not reasonably preparing nucleotides other than those encoding a polypeptide comprising SEQ ID NO:1.

The Examiner will appreciate that how to prepare polypeptides in which up to a few amino acids have been substituted, deleted or added from SEQ ID NO:1 or which comprises a sequence that is at least 95% homologous to SEQ ID NO:1 is explicitly taught in the specification. Moreover, assaying such peptides for transaldolase activity can be conducted according to the process described in the specification from page 28, line 14 to page 29, line 3, and Example (4). It will be appreciated that all such processes can be accomplished by a laboratory technician without the attention of the skilled artisan. Accordingly, such plainly does not require undue experimentation by those of ordinary skill in this art.

Claim 6 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Such rejection has been mooted by the above amendment.

Claim 4 is rejected under 35 U.S.C. §102(b) as being anticipated by Miyamoto et al. (Accession AAR63573) because Miyamoto is said to teach a polynucleotide encoding a transaldolase having the amino acid of SEQ ID NO:1 in which one or more amino acids have been substituted, deleted, or added.

Miyamoto discloses a polynucleotide sequence encoding a polypeptide having an amino acid sequence in which 115 amino acids are different from the amino acid sequence of SEQ ID NO:1 and having only 41% similarity with the amino acid sequence of SEQ ID NO:1, as per the alignment provided by the Examiner. This is not SEQ ID NO:1 (claim 1) and is hardly the 95% homology recited by claim 18, nor is it a “few” amino acids as in claim 17. Accordingly, in view of the above amendment, the rejection is overcome.

Regarding a formal matter, in addition to the accompanying Information Disclosure Statement, Applicants filed an earlier Information Disclosure Statement on June 10, 2002. Confirmation that the references cited in both Information Disclosure Statements is respectfully requested in the next Patent Office communication.

In view of the above amendments and remarks, Applicants submit that all of the Examiner's concerns are now overcome and the claims are now in allowable condition. Accordingly, reconsideration and allowance of this application is earnestly solicited.

Claims 4-8, 10-15 and 17-18 remain presented for continued prosecution.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



Attorney for Applicants  
Lawrence S. Perry  
Registration No. 31,865

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-3801  
Facsimile: (212) 218-2200

NY\_MAIN 398129v1